

SENATE BILL No. 508

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2; IC 14-27-7; IC 14-27-7.5.

Synopsis: Regulation of dams. Provides for the classification by the department of natural resources of dams according to hazard level. Specifies that the department has permitting authority for the construction and operation of a structure (a dam and its appurtenant works) and changes the inspection schedule for these structures based upon hazard levels. Requires the owner of a high hazard structure to prepare and submit to the department and certain other state and local agencies an emergency action plan for the structure.

Effective: July 1, 2002.

Wheeler

January 14, 2002, read first time and referred to Committee on Natural Resources.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 508

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-84.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2002]: **Sec. 84.5. "Emergency action plan", for purposes of**
4 **IC 14-27-7.5, has the meaning set forth in IC 14-27-7.5-2.**

5 SECTION 2. IC 14-8-2-121.3 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2002]: **Sec. 121.3. "Hazard classification",**
8 **for purposes of IC 14-27-7.5, has the meaning set forth in**
9 **IC 14-27-7.5-3.**

10 SECTION 3. IC 14-8-2-121.5 IS ADDED TO THE INDIANA
11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2002]: **Sec. 121.5. "Height", for purposes of**
13 **IC 14-27-7.5, has the meaning set forth in IC 14-27-7.5-4.**

14 SECTION 4. IC 14-8-2-195 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 195. "Owner" has the
16 following meaning:

17 (1) For purposes of IC 14-11-4, the meaning set forth in



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IC 14-11-4-2.

(2) For purposes of IC 14-15, a person who has the legal title to a watercraft.

(3) For purposes of IC 14-16-1, the meaning set forth in IC 14-16-1-6.

(4) For purposes of IC 14-16-2, the meaning set forth in IC 14-16-2-5.

(5) For purposes of IC 14-25-4, the meaning set forth in IC 14-25-4-4.

(6) For purposes of IC 14-27-7, the meaning set forth in IC 14-27-7-1.

(7) For purposes of IC 14-27-7.5, the meaning set forth in IC 14-27-7.5-5.

(8) For purposes of IC 14-36, the term includes the following:

(A) Owners in fee.

(B) Life tenants.

(C) Tenants for years.

(D) Holders of remainder of reversionary interests.

(E) Holders of leaseholds or easements.

(F) Holders of mineral rights.

~~(8)~~ **(9)** For purposes of IC 14-37, a person who has the right to drill into and produce from a pool and to appropriate the oil and gas produced from the pool for:

(A) the person or others; or

(B) the person and others.

~~(9)~~ **(10)** For the purposes of IC 14-22-10-2, the meaning set forth in IC 14-22-10-2(c).

SECTION 5. IC 14-8-2-268 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 268. "Structure" **has the following meaning:**

(1) For purposes of IC 14-20-1 and IC 14-21, ~~means~~ a manmade construction.

(2) For purposes of IC 14-27-7.5, the meaning set forth in IC 14-27-7.5-6.

SECTION 6. IC 14-8-2-298.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 298.5. "Volume", for purposes of IC 14-27-7.5, has the meaning set forth in IC 14-27-7.5-7.**

SECTION 7. IC 14-27-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. As used in this chapter, "owner" means an individual, a firm, a partnership, a copartnership, a lessee, an association, a corporation, an executor, an



1 administrator, a trustee, the state, an agency of the state, a municipal
 2 corporation, a political subdivision of the state, a legal entity, a
 3 drainage district, a levee district, a conservancy district, any other
 4 district established by law, or any other person who has a right, a title,
 5 or an interest in or to the property upon which the ~~dam~~, levee, dike, or
 6 floodwall and appurtenant works is located.

7 SECTION 8. IC 14-27-7-2 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. The owner of a ~~dam~~,
 9 levee, dike, or floodwall and appurtenant works shall maintain and
 10 keep the structures and appurtenant works in the state of repair and
 11 operating condition required by the following:

- 12 (1) The exercise of prudence.
- 13 (2) Due regard for life or property.
- 14 (3) The application of sound and accepted engineering principles.

15 SECTION 9. IC 14-27-7-3 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. The ~~commission~~
 17 **department**:

- 18 (1) has, on behalf of the state, jurisdiction and supervision over
 19 the maintenance and repair of ~~dams~~, levees, dikes, floodwalls, and
 20 appurtenant works in, on, or along the rivers **and** streams ~~and~~
 21 ~~lakes~~ of Indiana;
- 22 (2) shall exercise care to see that the ~~structures~~ **dikes, floodwalls,**
 23 **levees,** and appurtenances are maintained in a good and sufficient
 24 state of repair and operating condition to fully perform the
 25 intended purpose;
- 26 (3) may adopt rules under IC 4-22-2 for maintenance and
 27 operation that are necessary for the purposes of this chapter; and
 28 (4) may vary the standards for maintenance and operation, giving
 29 due consideration to the following:
 - 30 (A) The type and location of the ~~structure~~ **dike, floodwall,**
 31 **levee, or appurtenance.**
 - 32 (B) The hazards to which the ~~structure~~ **dike, floodwall, levee,**
 33 **or appurtenance** is or may be exposed.
 - 34 (C) The peril to life or property if the ~~structure~~ **dike,**
 35 **floodwall, levee, or appurtenance** fails to perform the
 36 structure's function.

37 SECTION 10. IC 14-27-7-4 IS AMENDED TO READ AS
 38 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) The department
 39 shall make an engineering inspection of all ~~dams~~, levees, dikes, and
 40 floodwalls and appurtenant works:

- 41 (1) at least one (1) time every ~~two (2)~~ **three (3)** years or at more
 42 frequent intervals if the exigencies of the case require; or



(2) upon the written request of an affected person or agency.

(b) The department shall place in the files of the department a report of each inspection conducted under subsection (a).

(c) This chapter does not apply to the following:

(1) A dam that meets the following conditions:

(A) Is built for the sole purpose of erosion control; watering livestock; recreation; or providing a haven or refuge for fish or wildlife.

(B) Has a drainage area above the dam of not more than one square mile.

(C) Does not exceed twenty (20) feet in height from the natural stream bed to spillway level.

(D) Does not impound more than one hundred (100) acre-feet of water.

(2) (1) A levee, dike, or floodwall that meets both of the following conditions:

(A) Is under a single private ownership.

(B) Provides protection only to land or other property under the single private ownership.

(3) (2) A dam, dike, floodwall, or levee that is regulated under the federal Mine Safety and Health Act of 1977, unless the dam, dike, floodwall, or levee is proposed to be retained as a permanent structure after bond release.

SECTION 11. IC 14-27-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. (a) If the department finds that a structure **dike, floodwall, levee**, or appurtenance is:

(1) not sufficiently strong;

(2) not maintained in a good and sufficient state of repair or operating condition; or

(3) unsafe and dangerous to life or property;

the department shall issue an order directing a notice of violation to the owner of the structure and **dike, floodwall, levee**, or appurtenance to make or cause to be made, at the owner's expense, the maintenance, alteration, repair, reconstruction, change in construction or location, or removal that the department considers reasonable and necessary.

(b) The department shall limit in the order notice the time for compliance with the order. However, the minimum time for compliance may not be less than ninety (90) days from the date of issuance of the order, unless there is extreme danger to the safety of life or property as provided in section 6 of this chapter: notice based on the seriousness of the circumstances involving the structure.

(c) The owner shall comply with the order: notice.

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SECTION 12. IC 14-27-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6. (a) If at any time the condition of ~~a dam~~, a levee, a dike, a floodwall, or an appurtenance becomes so dangerous to the safety of life and property that, in the opinion of the ~~commission~~, **department** there is not sufficient time for the issuance and enforcement of ~~an order~~ **a notice of violation** for the maintenance, alteration, repair, reconstruction, change in construction or location, or removal of the ~~structure~~ **dike, floodwall, levee**, or appurtenance in the manner provided in this chapter, the ~~commission~~ **department** may immediately take the measures that are essential to provide emergency protection to life and property. ~~For dams, the measures include the lowering of the water level by releasing water from the reservoir created by the dam.~~

(b) The ~~commission~~ **department** may recover the cost of the emergency measures from the owner by appropriate legal action.

SECTION 13. IC 14-27-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 7. An owner who fails to effect the maintenance, alteration, repair, reconstruction, change in construction or location, or removal within the time ~~limited~~ **limit set forth** in the ~~order~~ **notice of violation** of the ~~commission~~ **department** under:

(1) section 5 of this chapter; or

(2) IC 13-2-20-4 (before its repeal);

commits a Class B infraction. Every day of failure constitutes a separate infraction.

SECTION 14. IC 14-27-7-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. The ~~commission~~ **department** and the ~~commission's~~ **department's** agents, engineers, and other employees may, for the purposes of **determining the department's jurisdiction and performing** the engineering inspections provided in section 4 of this chapter, enter upon any land or water in Indiana without liability for trespass. The owner of a ~~dam~~, levee, dike, or floodwall and appurtenant works shall do the following:

(1) Cooperate with the ~~commission~~ **department** and the ~~commission's~~ **department's** agents, engineers, and other employees in the conduct of the ~~engineering~~ inspections.

(2) Facilitate access to the ~~structure~~ **dike, floodwall, levee**, or appurtenance.

(3) Furnish upon request the plans, specifications, operating and maintenance data, or other information that is pertinent to the ~~structure and dike~~, **floodwall, levee**, or appurtenance.

SECTION 15. IC 14-27-7-9 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 9. This chapter does not create a liability for damages against the ~~commission~~ **department** or the ~~commission's~~ **department's** officers, agents, and employees caused by or arising out of any of the following:

- (1) The construction, maintenance, operation, or failure of a ~~dam~~, levee, dike, or floodwall and appurtenant works.
- (2) The issuance and enforcement of ~~an order~~ **a notice of violation** or a rule issued by the ~~commission~~ **department** to carry out the ~~commission's~~ **department's** duties.

SECTION 16. IC 14-27-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 7.5. Regulation of Dams

Sec. 1. This chapter does not apply to the following:

- (1) A structure that meets all of the following conditions:

- (A) Is built for the sole purpose of erosion control, watering livestock, recreation, or providing a haven or refuge for fish or wildlife.
- (B) Has a drainage area above the dam of not more than one (1) square mile.
- (C) Does not exceed twenty (20) feet in height.
- (D) Does not impound a volume of more than one hundred (100) acre-feet of water.

- (2) A structure that is regulated under the federal Mine Safety and Health Act of 1977, unless the structure is proposed to be retained as a permanent structure after bond release.

Sec. 2. As used in this chapter, "emergency action plan" means a document that complies with section 10 of this chapter.

Sec. 3. As used in this chapter, "hazard classification" means a rating assigned to a structure by the department based on the potential consequences resulting from the uncontrolled release of its contents due to a failure or misoperation of the structure.

Sec. 4. As used in this chapter, "height" means the vertical dimension of a structure as measured from the lowest point in the natural streambed or watercourse under the centerline of the structure to the top of the structure.

Sec. 5. As used in this chapter, "owner" means an individual, a firm, a partnership, a copartnership, a lessee, an association, a corporation, an executor, an administrator, a trustee, the state, an agency of the state, a municipal corporation, a political subdivision of the state, a legal entity, a drainage district, a levee district, a conservancy district, any other district established by law, or any

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other person who has a right, a title, or an interest in or to the property upon which the structure is located.

Sec. 6. As used in this chapter, "structure" means a dam and its appurtenant works.

Sec. 7. As used in this chapter, "volume" means the amount of water that is impounded by a structure:

(1) at or below the elevation of the top of the structure; or

(2) at or below the maximum design flood pool elevation;

whichever is lower.

Sec. 8. The owner of a structure shall maintain and keep the structure in the state of repair and operating condition required by the following:

(1) The exercise of prudence.

(2) Due regard for life and property.

(3) The application of sound and accepted engineering principles.

Sec. 9. (a) The department:

(1) has, on behalf of the state, jurisdiction and supervision over the maintenance and repair of structures in, on, or along the rivers, streams, and lakes of Indiana;

(2) shall exercise care to see that the structures are maintained in a good and sufficient state of repair and operating condition to fully perform the intended purpose;

(3) shall grant permits for the construction and operation of structures in, on, or along the rivers, streams, and lakes of Indiana;

(4) may adopt rules under IC 4-22-2 for permitting, maintenance, and operation that are necessary for the purposes of this chapter; and

(5) may vary the standards for permits, maintenance, and operation, giving due consideration to the following:

(A) The type and location of the structure.

(B) The hazards to which the structure is or may be exposed.

(C) The peril to life or property if the structure fails to perform the structure's function.

(b) The department shall establish by rule the criteria for assigning a hazard classification to a structure that is based on the potential consequences resulting from the uncontrolled release of the structure's contents due to a failure of the structure. The hazard classification system must include the following classes of structures:



(1) **High hazard:** A structure the failure of which may cause the loss of life and serious damage to homes, industrial and commercial buildings, public utilities, major highways, or railroads.

(2) **Significant hazard:** A structure the failure of which may damage isolated homes and highways, or cause the temporary interruption of public utility services.

(3) **Low hazard:** A structure the failure of which may damage farm buildings, agricultural land, or local roads.

Sec. 10. (a) The owner of a high hazard structure shall:

(1) have a professional engineer licensed under IC 25-31 who is experienced in dam engineering make an engineering inspection of the high hazard structure and prepare or revise the emergency action plan for the structure at least one (1) time every two (2) years;

(2) prepare or revise an emergency action plan for the structure that includes:

(A) actions to be taken upon indications of an impending failure of the structure;

(B) a notification system for affected properties downstream from the structure;

(C) the potential extent of downstream flooding upon a failure; and

(D) any other information required by the department; and

(3) submit the emergency action plan and a report of the inspection in a form approved by the department to the department. The report must include at least the following information:

(A) An evaluation of the structure's condition, spillway capacity, operational adequacy, and structural integrity.

(B) A determination of whether deficiencies exist that could lead to the failure of the structure, and recommendations for maintenance, repairs, and alterations to the structure to eliminate deficiencies, including a recommended schedule for necessary upgrades to the structure.

(b) If after an inspection under subsection (a) the licensed professional engineer who conducted the inspection determines that maintenance, repairs, or alterations to a high hazard structure are necessary to remedy deficiencies in the structure, the owner shall perform the recommended maintenance, repairs, or

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alterations.

(c) After the emergency action plan has been prepared or revised under subsection (a), the owner of a high hazard structure shall submit the emergency action plan to the following:

- (1) The department.
- (2) The state emergency management agency.
- (3) The county emergency management director for the county in which the structure is located.
- (4) Other state or local officials indicated by the county emergency management director for the county in which the structure is located.
- (5) The owner's representative who is responsible for implementing the emergency action plan.

(d) The department shall issue a notice of violation under section 12 of this chapter to the owner of a high hazard structure who fails to:

- (1) have the structure inspected under subsection (a);
- (2) prepare an emergency action plan under subsection (a);
- (3) perform recommended maintenance, repairs, or alterations to the structure under subsection (b); or
- (4) biennially submit:
 - (A) the inspection report prepared under subsection (a); and
 - (B) the emergency action plan prepared or revised under subsection (a).

(e) The department may make an engineering inspection of a high hazard structure to ensure compliance with this chapter.

Sec. 11. (a) The department shall make an engineering inspection of:

- (1) a significant hazard structure at least one (1) time every three (3) years; and
- (2) a low hazard structure at least one (1) time every five (5) years;

or at more frequent intervals if the exigencies of the case require.

(b) The department shall place in the files of the department a report of each inspection conducted under subsection (a).

Sec. 12. (a) If the department finds that a structure is:

- (1) not sufficiently strong;
- (2) not maintained in a good and sufficient state of repair or operating condition;
- (3) not designed to remain safe during infrequent loading events; or

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(4) unsafe and dangerous to life and property;
 the department may issue a notice of violation by letter to the owner of the structure. The notice may require the owner of the structure to make or cause to be made, at the owner's expense, the maintenance, alteration, repair, reconstruction, change in construction or location, or removal that the department considers reasonable and necessary.

(b) The department shall limit in the notice the time for compliance with the notice based on the seriousness of the circumstances involving the structure.

(c) The owner shall comply with the notice.

Sec. 13. (a) If at any time the condition of a structure becomes so dangerous to the safety of life and property that, in the opinion of the department, there is not sufficient time for the issuance and enforcement of an order for the maintenance, alteration, repair, reconstruction, change in construction or location, or removal of the structure in the manner provided in this chapter, the department may immediately take the measures that are essential to provide emergency protection to life and property, including the lowering of the water level by releasing water or by a controlled breach of the structure.

(b) The department may recover the cost of the emergency measures from the owner by appropriate legal action.

Sec. 14. An owner who fails to effect the maintenance, alteration, repair, reconstruction, change in construction or location, or removal within the time limit set forth in the notice of violation of the department under:

- (1) section 12 of this chapter; or
- (2) IC 13-2-20-4 (before its repeal);

commits a Class B infraction. Every day of failure constitutes a separate infraction.

Sec. 15. The department and the department's agents, engineers, and other employees may, for purposes of determining the department's jurisdiction and performing the engineering inspections provided in sections 10 and 11 of this chapter, enter upon any land or water in Indiana without liability for trespass. The owner of a structure shall do the following:

- (1) Cooperate with the department and the department's agents, engineers, and other employees in the conduct of the inspections.
- (2) Facilitate access to the structure.
- (3) Furnish upon request the plans, specifications, operating

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1 and maintenance data, or other information that is pertinent
2 to the structure.

3 **Sec. 16. This chapter does not create a liability for damages**
4 **against the department or the department's officers, agents, and**
5 **employees caused by or arising out of any of the following:**

6 (1) The construction, maintenance, operation, or failure of a
7 structure.

8 (2) The issuance and enforcement of a notice of violation or a
9 rule issued by the department to carry out the department's
10 duties.

11 **SECTION 17. [EFFECTIVE JULY 1, 2002] (a) As used in this**
12 **SECTION, "department" refers to the department of natural**
13 **resources.**

14 (b) Notwithstanding IC 14-27-7.5-9, as added by this act, and
15 IC 14-27-7, as amended by this act, the department may continue
16 to issue permits for dams under IC 14-27-7 until the rules
17 concerning permitting under IC 14-27-7.5 become effective.

18 (c) Notwithstanding IC 14-27-7.5, as added by this act, a permit
19 for a dam issued under IC 14-27-7 remains valid until the
20 expiration of the permit.

21 (d) This SECTION expires June 30, 2007.

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